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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION

Report of the Sixth Committee

Rapporteur: Mrs. Silvia A. FERNÁNDEZ de GURMENDI (Argentina)

I. INTRODUCTION

1. At its 3rd plenary meeting, on 23 September 1994, the General Assembly, on the recommendation of the General Committee, decided to include in its agenda the item entitled "Report of the International Law Commission on the work of its forty-sixth session" and to allocate it to the Sixth Committee.

2. In connection with the item, the Sixth Committee had before it the following documents:

(a) Report of the International Law Commission on the work of its forty-sixth session; 1/

(b) Note by the Secretary-General containing the text of the draft articles adopted by the International Law Commission on topics considered at its forty-sixth session (A/49/355);

(c) Letter dated 4 November 1994 from the Acting Permanent Representative of Japan to the United Nations addressed to the Secretary-General (A/C.6/49/3);

(d) Letter dated 18 November 1994 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the Secretary-General (A/C.6/49/5).

1/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10).

3. The Sixth Committee considered the item at its 16th to 28th meetings, from 24 October to 4 November, and at its 40th and 41st meetings, on 25 and 29 November 1994. The summary records of those meetings contain the views of the representatives who spoke during the Committee's consideration of the item (A/C.6/49/SR.16-28, 40 and 41).

4. At the 16th meeting, on 24 October, the Chairman of the International Law Commission at its forty-sixth session introduced the Commission's report on the work of that session. At the 28th meeting, on 4 November, the Chairman of the Commission made a closing statement.

II. CONSIDERATION OF PROPOSALS

A. Draft resolution A/C.6/49/L.22

5. At its 41st meeting, on 29 November, the Committee had before it a draft resolution submitted by its Chairman, entitled "Report of the International Law Commission on the work of its forty-sixth session" (A/C.6/49/L.22).

6. At the same meeting, the Committee adopted draft resolution A/C.6/49/L.22 without a vote (see para. 32, draft resolution I).

7. A statement in explanation of position was made by the representative of Cameroon (see A/C.6/49/SR.41).

B. Draft resolution on the draft articles on the law of the non-navigational uses of international watercourses

8. At its 40th meeting, on 25 November, the Committee had before it a draft resolution submitted by its Chairman, entitled "Draft articles on the law of the non-navigational uses of international watercourses" (A/C.6/49/L.27), which read:

"The General Assembly,

"Having considered chapter III of the report of the International Law Commission on the work of its forty-sixth session, 1/ which contains final draft articles of and commentaries on the law of the non-navigational uses of international watercourses,

"Noting that the Commission decided to recommend the draft articles to the General Assembly, and recommended the elaboration of a convention by the Assembly or by an international conference of plenipotentiaries on the basis of the draft articles,

"Mindful of Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

"Believing that successful codification and progressive development of the rules of international law governing the non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

"Taking into account the existence of bilateral or multilateral agreements governing the non-navigational uses of international watercourses, which should not be affected by the adoption of a new international instrument unless the parties to those agreements have otherwise decided,

"1. Expresses its appreciation to the International Law Commission for its valuable work on the law of the non-navigational uses of international watercourses, and to the successive special rapporteurs for their contribution to that work;

"2. Invites States to submit, not later than 1 August 1995, written comments and observations on the draft articles adopted by the International Law Commission;

"3. Decides that, at the beginning of its fiftieth session, the Sixth Committee shall convene as a Working Group of the Whole for three weeks from 2 to 20 October 1995 to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments of States as well as views expressed in the debate at the forty-ninth session of the General Assembly;

"4. Also decides that the Working Group of the Whole shall, without prejudice to the rules of procedure of the General Assembly, follow the methods of work and procedures outlined in the annex to the present resolution, subject to any modifications which it may deem appropriate;

"5. Requests the Secretary-General to arrange for the presence of the Special Rapporteur on the law of the non-navigational uses of international watercourses as an expert during the debates on the topic at the fiftieth session of the General Assembly, and to submit at that session all relevant documentation;

"6. Decides to include in the provisional agenda of its fiftieth session an item entitled 'Convention on the law of the non-navigational uses of international watercourses'.

"ANNEX

"Methods of work and procedures

"The draft articles prepared by the International Law Commission shall be the basic proposal before the Working Group of the Whole.

"The Working Group of the Whole shall start at once with a discussion of the draft articles on an article by article basis, without prejudice to

the possibility of considering simultaneously closely connected articles, the decisions on article 2 on 'Use of terms' being reserved for the concluding stages of the work.

"The Working Group of the Whole shall establish a Drafting Committee. The Chairman of the Working Group shall determine the composition of the Drafting Committee. The Drafting Committee shall elect its own Chairman.

"Once considered by the Working Group of the Whole, each article or group of articles shall be referred to the Drafting Committee for examination in the light of the discussion.

"The Drafting Committee shall make recommendations to the Working Group of the Whole in relation to each article or group of articles. It shall also prepare and present to the Working Group of the Whole, for its approval, a draft preamble and a set of final clauses.

"The Working Group of the Whole shall endeavour to adopt all texts by general agreement. Failing such an agreement within a reasonable period of time, it will take its decisions in accordance with the rules of procedure of the General Assembly."

9. Amendments to the draft resolution A/C.6/49/L.27 were proposed by Bangladesh (A/C.6/49/L.28), by which:

(a) In operative paragraph 2, the date 1 August 1995 would be replaced with 1 January 1996;

(b) A new operative paragraph would be inserted after operative paragraph 2, reading:

"Requests the Secretary-General to circulate not later than 15 February 1996 written comments and observations submitted by States on the subject";

(c) Operative paragraph 3 would be replaced with the following:

"3. Decides to convene an international conference of plenipotentiaries to elaborate and conclude a convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles recommended by the International Law Commission, the written comments and observations of States submitted under operative paragraph 2, and the views expressed in the debate on the subject at the forty-ninth session of the General Assembly";

(d) Operative paragraph 4 would be replaced with the following:

"4. Also decides that the date and place of the conference shall be determined at the fiftieth session of the General Assembly, due consideration being given to the need for adequate preparatory work, circulation of the comments of States and previous reports of the Special

Rapporteurs of the International Law Commission on this subject with a view to ensuring the widest possible agreement at the conference";

(e) The annex would be deleted.

10. At its 41st meeting, on 29 November, the Committee had before it a revised draft resolution (A/C.6/49/L.27/Rev.1) submitted by its Chairman.

11. Also at the 41st meeting, it was announced that the amendments submitted by Bangladesh (A/C.6/49/L.28) were not insisted upon.

12. At the same meeting, the representative of the Sudan requested a separate vote on the penultimate preambular paragraph of the revised draft resolution.

13. Statements in explanation of position on the penultimate preambular paragraph of the draft resolution were made by the representatives of France, Canada and Slovakia (see A/C.6/49/SR.41).

14. By a recorded vote of 93 to 2, with 20 abstentions, the Committee decided to retain the penultimate preambular paragraph of revised draft resolution A/C.6/49/L.27/Rev.1. The voting was as follows:

In favour: Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Denmark, Djibouti, Egypt, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mexico, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Sierra Leone, Singapore, Slovakia, Spain, Suriname, Sweden, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, Zambia.

Against: Ethiopia, Sudan.

Abstaining: Botswana, Cuba, Ecuador, Fiji, Guyana, Haiti, India, Iran (Islamic Republic of), Iraq, Kenya, Lesotho, Mozambique, Niger, Nigeria, Sri Lanka, Swaziland, Uganda, United Republic of Tanzania, Viet Nam, Zimbabwe.

15. The Committee then adopted draft resolution A/C.6/49/L.27/Rev.1, as a whole, without a vote (see para. 32, draft resolution II).

16. Statements in explanation of position on the draft resolution were made by the representatives of the Sudan and Ethiopia (see A/C.6/49/SR.41).

C. Draft resolution on the establishment of an international criminal court

17. The Committee initially had before it a draft resolution entitled "Question of the establishment of an international criminal court" (A/C.6/49/L.5) submitted by Costa Rica, Japan, Romania, the United Kingdom of Great Britain and Northern Ireland and the United States of America, later joined by the Republic of Korea and the Republic of Moldova, which read:

"The General Assembly,

"Recalling its resolution 48/31 of 9 December 1993, in which it requested the International Law Commission to continue its work on the question of a draft statute for an international criminal court with a view to elaborating a draft statute if possible at its forty-sixth session in 1994,

"Noting with satisfaction that the International Law Commission has completed its work on such a draft statute, 2/

"Recognizing the contribution now being made by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991,

"1. Expresses its appreciation to the International Law Commission for having elaborated and presented a draft statute for the establishment of an international criminal court;

"2. Decides to establish an ad hoc committee open to all Member States to prepare for decisions at the fiftieth session in connection with consideration of the draft statute prepared by the International Law Commission;

"3. Requests the Ad Hoc Committee to review the major substantive and administrative issues relating to the establishment of an international criminal court, including issues arising out of the report of the International Law Commission 1/ and to provide its views and conclusions to the General Assembly at its fiftieth session;

"4. Requests the Secretary-General to invite the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 to participate in the work of the Ad Hoc Committee;

2/ Ibid., para. 91.

"5. Decides that the Ad Hoc Committee will meet from ... to ... 1995, and requests the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

"6. Requests the Secretary-General to present to the Ad Hoc Committee a preliminary report with provisional estimates of the staffing, structure and costs of the establishment and operation of an international criminal court;

"7. Decides to include in the provisional agenda of its fiftieth session an item entitled 'Question of the establishment of an international criminal court'."

18. Amendments to draft resolution A/C.6/49/L.5 were proposed by the delegation of Ghana (A/C.6/49/L.8), by which:

(a) The third preambular paragraph would be deleted;

(b) Operative paragraph 2 would be deleted;

(c) Operative paragraph 3 would be replaced with the following:

"2. Decides to establish an ad hoc committee open to all Member States with the mandate to review the major substantive and administrative issued relating to the establishment of an international criminal court, including issues arising out of the report of the International Law Commission, and to provide its views and conclusions to the General Assembly for transmission to the United Nations conference of plenipotentiaries on an international criminal court";

(d) Operative paragraph 4 would be deleted;

(e) Operative paragraph 5 would be replaced with the following:

"3. Decides that the Ad Hoc Committee will meet for a two-week period in the spring of 1995, and requests the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work";

(f) Operative paragraph 6 would be renumbered paragraph 4.

(g) A new operative paragraph 5 would be inserted, reading:

"5. Decides to convene a United Nations conference of plenipotentiaries for a period of 4 to 6 weeks in the spring of 1996 to elaborate and adopt the statute of an international criminal court";

(h) A new operative paragraph 6 would be inserted, reading:

"6. Decides also that the draft statute of an international criminal court and commentaries by the International Law Commission, the summary of the debate in the Sixth Committee at the forty-ninth session of the General

Assembly on the report of the International Law Commission, the summary of the debate in, and the report of, the Ad Hoc Committee, as well as the comments of States, shall be transmitted by the Secretary-General to the United Nations Conference of Plenipotentiaries as background documentation for the elaboration and adoption of the statute of an international criminal court";

(i) A new operative paragraph 7 would be inserted, reading:

"7. Accepts with gratitude the offer of the Government of Italy to host the United Nations Conference of Plenipotentiaries on the elaboration and adoption of the statute of an international criminal court in the spring of 1996";

(j) Operative paragraph 7 would be renumbered paragraph 8.

19. The Committee also had before it a draft resolution entitled "United Nations Conference to Establish an International Criminal Court" (A/C.6/49/L.6) submitted by Argentina, Australia, Belarus, Belgium, Canada, Denmark, Finland, Iceland, Italy, Jamaica, Malaysia, New Zealand, Norway, Poland, the Russian Federation, Sweden and Trinidad and Tobago, later joined by the Bahamas, Chile, Ireland, Panama, Portugal and Spain which read:

"The General Assembly,

"Recalling its resolutions 45/41 of 28 November 1990 and 46/54 of 9 December 1991 in which it requested the International Law Commission to consider the question of international criminal jurisdiction, including the possibility of establishing an international criminal court or other criminal mechanism,

"Recalling further its resolution 47/33 of 25 November 1992 in which it charged the International Law Commission with the project of the elaboration of a draft statute for an international criminal court,

"Recalling also its resolution 48/31 of 9 December 1993, in which it requested the International Law Commission to continue its work as a matter of priority with a view to elaborating a draft statute for such a court, if possible at the Commission's forty-sixth session,

"Noting that the International Law Commission, at its 2374th meeting, adopted the text of such a statute and decided at its 2376th meeting to recommend, in accordance with article 23 of its statute, that an international conference of plenipotentiaries be convened to study the draft statute and to conclude a convention on the establishment of an international criminal court,

"Recalling that article VI of the Convention on the Prevention and Punishment of the Crime of Genocide 3/ of 1948 refers to the possibility of trial of individuals by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction,

"Recalling also that the Security Council, in its resolution 827 (1993) of 25 May 1993, creating an ad hoc tribunal to prosecute persons for grievous violations of international humanitarian law committed in the territory of the former Yugoslavia, stated its belief that the establishment of such a tribunal would contribute to ensuring that the violations ended and the perpetrators were brought to justice,

"Convinced that international cooperation in the effective prosecution and suppression of crimes of international concern will be assisted by the creation of a permanent international criminal court,

"1. Decides to convene a United Nations conference at the highest possible level of participation in 1996;

"2. Affirms that the Conference should conclude a Convention on the Establishment of an International Criminal Court;

"3. Decides to establish a Preparatory Committee of the General Assembly open to all States Members of the United Nations or members of the specialized agencies, with the participation of observers in accordance with the established practice of the General Assembly;

"4. Decides that the Preparatory Committee shall hold an organizational session early in 1995 and substantive sessions in 1995 and 1996, all at United Nations Headquarters in New York, the timing and duration of which shall be determined by the Preparatory Committee at its organizational session;

"5. Decides that the Preparatory Committee, at its organizational session, shall elect, with due regard to equitable geographic representation, the Chairman and other members of its bureau;

"6. Requests the Secretary-General of the United Nations to make appropriate secretariat arrangements;

"7. Decides that the preparatory process and the Conference itself should be funded through the regular budget of the United Nations and within existing resources;

"8. Decides to establish a voluntary fund for the purpose of supporting developing countries, in particular the least developed among them, in participating fully and effectively in the Conference and in its preparatory process, and invites Governments to contribute to the fund;

3/ Resolution 260 A (III), annex.

"9. Requests the Chairman of the Preparatory Committee to report to the General Assembly at its fiftieth session on the progress of the work of the Committee;

"10. Decides to include in the provisional agenda of its fiftieth and fifty-first sessions an item entitled 'United Nations Conference to Establish an International Criminal Court'."

20. At the 40th meeting, on 25 November, the representative of France introduced a draft resolution entitled "Establishment of an international criminal court" (A/C.6/49/L.24).

21. At the same meeting, the representative of the United States, on behalf of the sponsors of draft resolution A/C.6/49/L.5, and the representative of Canada, on behalf of the sponsors of draft resolution A/C.6/49/L.6, announced that those draft resolutions were being withdrawn in favour of draft resolution A/C.6/49/L.24.

22. At the 41st meeting, on 29 November, it was announced that the amendments submitted by Ghana (A/C.6/49/L.8) to draft resolution A/C.6/49/L.5 had been withdrawn.

23. Also at the 41st meeting, the representative of Ghana introduced amendments (A/C.6/49/L.26) to draft resolution A/C.6/49/L.24, by which:

(a) Operative paragraph 6 would be replaced with the following:

"6. Decides, on the basis of the conclusions of the ad hoc committee, to convene a United Nations conference of plenipotentiaries not later than 1997 to elaborate and adopt a statute of an international criminal court";

(b) A new operative paragraph 7 would be inserted, reading:

"7. Further decides that the draft statute of an international criminal court and commentaries by the International Law Commission, the summary of the debate in the Sixth Committee at the forty-ninth session of the General Assembly on the report of the Commission, the summary of the debate in, and the report of, the ad hoc committee, as well as the comments of States, shall be transmitted by the Secretary-General to the United Nations conference of plenipotentiaries as background documentation for the elaboration and adoption of the statute of an international criminal court";

(c) A new operative paragraph 8 would be inserted, reading:

"8. Decides also to include in the provisional agenda of its fiftieth session an item entitled Establishment of an international criminal court".

24. The representative of Malaysia made a statement in explanation of position on the amendments submitted by Ghana (A/C.6/49/L.26) (see A/C.6/49/SR.41).

25. At the same meeting, the Secretary of the Committee made a statement on the conference servicing implications of draft resolution A/C.6/49/L.24.

26. Also at the 41st meeting, the representative of Norway, on behalf of the Nordic countries, moved, within the terms of rule 116 of the rules of procedure, that no action be taken on the amendments contained in document A/C.6/49/L.26. The representatives of France and India spoke in favour of the motion. The representatives of Ghana and Nigeria spoke against the motion.

27. The motion was then adopted by a recorded vote of 58 to 29, with 36 abstentions. The voting was as follows: 4/

In favour: Australia, Austria, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Fiji, Finland, France, Georgia, Germany, Greece, Guyana, Haiti, Honduras, Hungary, Iceland, India, Ireland, Israel, Japan, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Morocco, Nepal, Netherlands, New Zealand, Norway, Oman, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Slovakia, Spain, Sri Lanka, Sweden, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uzbekistan.

Against: Angola, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Chile, Colombia, Cuba, Djibouti, Ecuador, Ethiopia, Ghana, Guatemala, Guinea, Libyan Arab Jamahiriya, Malaysia, Mali, Namibia, Niger, Nigeria, Paraguay, Senegal, Sierra Leone, South Africa, Sudan, Uruguay, Venezuela, Zambia.

Abstaining: Algeria, Argentina, Bangladesh, Brunei Darussalam, Cameroon, Congo, Côte d'Ivoire, Cyprus, Egypt, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Kazakhstan, Kenya, Lesotho, Malawi, Mauritius, Mexico, Mongolia, Mozambique, Pakistan, Panama, Peru, Philippines, Singapore, Suriname, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Republic of Tanzania, Zimbabwe.

28. The representatives of Brazil and the Sudan made statements in explanation of position on the motion (see A/C.6/49/SR.41).

29. In view of the adoption of the motion submitted by the representative of Norway on behalf of the Nordic countries, the Committee took no action on the amendments submitted by Ghana (A/C.6/49/L.26).

4/ The representative of Poland indicated that, had he not been prevented from voting by the fact that he was acting as Chairman when the motion was put to the vote, he would have voted in favour of the motion.

30. The Committee then adopted draft resolution A/C.6/49/L.24 without a vote (see para. 32, draft resolution III).

31. Statements in explanation of position were made by the representatives of Nigeria, Italy, New Zealand, Fiji, Australia and the United States of America (see A/C.6/49/SR.41).

III. RECOMMENDATIONS OF THE SIXTH COMMITTEE

32. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Report of the International Law Commission on the work of its forty-sixth session

The General Assembly,

Having considered the report of the International Law Commission on the work of its forty-sixth session, 5/

Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 6/ and to give increased importance to its role in relations among States,

Recognizing the importance of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission, and of enabling the Sixth Committee and the Commission further to enhance their contribution to the progressive development of international law and its codification,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

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5/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10).

6/ Resolution 2625 (XXV), annex.

Recognizing the role of the International Law Commission in the fulfilment of the objectives of the United Nations Decade of International Law,

Considering that experience has demonstrated the usefulness of structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention on each of the main topics dealt with in the report, and that this process is facilitated when the Commission indicates specific issues on which expressions of views by Governments are of particular interest for the continuation of its work,

1. Takes note of the report of the International Law Commission on the work of its forty-sixth session; 5/

2. Expresses its appreciation to the International Law Commission for the work accomplished at that session, in particular for the completion of a draft statute for an international criminal court and the adoption of final draft articles on the law of the non-navigational uses of international watercourses;

3. Recommends that, taking into account the comments of Governments, whether in writing or expressed orally in debates in the General Assembly, the International Law Commission should continue its work on the topics in its current programme;

4. Notes the intentions of the International Law Commission for the programme of work for the remainder of the current term of office of its members, 7/ and urges the Commission to resume at its forty-seventh session the work on the draft Code of Crimes against the Peace and Security of Mankind and on State responsibility in such a manner that the second reading of the draft Code and the first reading of the articles on State responsibility may be completed before the end of the present term of office of the members of the Commission;

5. Requests the Secretary-General to update the survey of State practice relevant to international liability for injurious consequences arising out of acts not prohibited by international law, prepared by the Secretariat in 1984, 8/ as a useful contribution to the ongoing work of the Commission on the topic;

6. Endorses the intention of the International Law Commission to undertake work on the topics "The law and practice relating to reservations to treaties" and "State succession and its impact on nationality of natural and legal persons", on the understanding that the final form to be given to the work on these topics shall be decided after a preliminary study is presented to the General Assembly, and, in connection with the latter topic, requests the

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7/ See Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), para. 390.

8/ Yearbook of the International Law Commission, 1985, vol. II, part I, (addendum).

Secretary-General to invite Governments to submit by 1 March 1995 relevant materials including national legislation, decisions of national tribunals and diplomatic and official correspondence relevant to the topic;

7. Expresses its appreciation for the efforts of the International Law Commission to improve its procedures and methods of work;

8. Requests the International Law Commission:

(a) To consider thoroughly:

(i) The planning of its activities and programme for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;

(ii) Its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee;

(b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work;

9. Takes note of the comments of the International Law Commission on the question of the duration of its session, as presented in its report, 9/ and expresses the view that the requirements of the work for the progressive development of international law and its codification and the magnitude and complexity of the subjects on the agenda of the Commission make it desirable that the usual duration of its sessions be maintained;

10. Reaffirms its previous decisions concerning the role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

11. Once again expresses the wish that seminars will continue to be held in conjunction with the sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars, appeals to States that can do so to make the voluntary contributions that are urgently needed for the holding of the seminars, and requests the Secretary-General to provide the seminars, from within existing resources, with adequate services, including interpretation, as required;

9/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), para. 402.

12. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the forty-ninth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate;

13. Recommends the continuation of efforts to improve the ways in which the report of the International Law Commission is considered in the Sixth Committee, with a view to providing effective guidance for the Commission in its work;

14. Also recommends that the debate on the report of the International Law Commission at the fiftieth session of the General Assembly commence on 23 October 1995.

DRAFT RESOLUTION II

Draft articles on the law of the non-navigational uses of international watercourses

The General Assembly,

Having considered chapter III of the report of the International Law Commission on the work of its forty-sixth session, 10/ which contains final draft articles of and commentaries on the law of the non-navigational uses of international watercourses,

Noting that the Commission decided to recommend the draft articles to the General Assembly, and recommended the elaboration of a convention by the Assembly or by an international conference of plenipotentiaries on the basis of the draft articles,

Mindful of Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that successful codification and progressive development of the rules of international law governing the non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

Taking into account the existence of bilateral or multilateral agreements governing the non-navigational uses of international watercourses, which should not be affected by the adoption of a new international instrument unless the parties to those agreements have otherwise decided,

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10/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10).

Also taking into account the fact that, despite the existence of a number of bilateral treaties and regional agreements, the use of international watercourses is still based in part on general principles and rules of customary law,

1. Expresses its appreciation to the International Law Commission for its valuable work on the law of the non-navigational uses of international watercourses, and to the successive special rapporteurs for their contribution to that work;

2. Invites States to submit, not later than 1 July 1996, written comments and observations on the draft articles adopted by the International Law Commission;

3. Decides that, at the beginning of its fifty-first session, the Sixth Committee shall convene as a Working Group of the Whole, open to States Members of the United Nations or members of specialized agencies, for three weeks from 7 to 25 October 1996 to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session of the General Assembly;

4. Also decides that the Working Group of the Whole shall, without prejudice to the rules of procedure of the General Assembly, follow the methods of work and procedures outlined in the annex to the present resolution, subject to any modifications which it may deem appropriate;

5. Requests the Secretary-General to arrange for the presence of the Special Rapporteur on the law of the non-navigational uses of international watercourses as an expert during the debates on the topic at the fifty-first session of the General Assembly, and to submit at that session all relevant documentation;

6. Decides to include in the provisional agenda of its fifty-first session an item entitled "Convention on the law of the non-navigational uses of international watercourses".

ANNEX

Methods of work and procedures

The draft articles prepared by the International Law Commission shall be the basic proposal before the Working Group of the Whole.

The Working Group of the Whole shall start at once with a discussion of the draft articles on an article-by-article basis, without prejudice to the possibility of considering simultaneously closely connected articles, the decisions on article 2, "Use of terms", being reserved for the concluding stages of the work.

The Working Group of the Whole shall establish a Drafting Committee.

Once considered by the Working Group of the Whole, each article or group of articles shall be referred to the Drafting Committee for examination in the light of the discussion.

The Drafting Committee shall make recommendations to the Working Group of the Whole in relation to each article or group of articles. It shall also prepare and present to the Working Group of the Whole, for its approval, a draft preamble and a set of final clauses.

The Working Group of the Whole shall endeavour to adopt all texts by general agreement. Failing such an agreement within a reasonable period of time, it will take its decisions in accordance with the rules of procedure of the General Assembly.

DRAFT RESOLUTION III

Establishment of an international criminal court

The General Assembly,

Recalling its resolution 47/33 of 25 November 1992, in which it requested the International Law Commission to undertake the elaboration of a draft statute for an international criminal court,

Recalling also its resolution 48/31 of 9 December 1993, in which it requested the International Law Commission to continue its work on the question of the draft statute for an international criminal court, with a view to elaborating a draft statute for such a court, if possible at the Commission's forty-sixth session in 1994,

Noting that the International Law Commission adopted a draft statute for an international criminal court at its forty-sixth session and decided to recommend that an international conference of plenipotentiaries be convened to study the draft statute and to conclude a convention on the establishment of an international criminal court,

Expressing deep appreciation for the offer of the Government of Italy to host a conference on the establishment of an international criminal court,

1. Welcomes the report of the International Law Commission on the work of its forty-sixth session, 11/ including the recommendations contained therein;

2. Decides to establish an ad hoc committee open to all States Members of the United Nations or members of specialized agencies to review the major substantive and administrative issues arising out of the draft statute prepared

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11/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10).

by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries;

3. Also decides that the ad hoc committee will meet from 3 to 13 April 1995 and, if it so decides, from 14 to 25 August 1995, and submit its report to the General Assembly at the beginning of its fiftieth session, and requests the Secretary-General to provide the ad hoc committee with the necessary facilities for the performance of its work;

4. Invites States to submit to the Secretary-General, before 15 March 1995, written comments on the draft statute for an international criminal court, and requests the Secretary-General to invite such comments from relevant international organs;

5. Requests the Secretary-General to submit to the ad hoc committee a preliminary report with provisional estimates of the staffing, structure and costs of the establishment and operation of an international criminal court;

6. Decides to include in the provisional agenda of its fiftieth session an item entitled "Establishment of an international criminal court", in order to study the report of the ad hoc committee and the written comments submitted by States and to decide on the convening of an international conference of plenipotentiaries to conclude a convention on the establishment of an international criminal court, including on the timing and duration of the conference.